Calendar No. 254

100TH CONGRESS
1st Session

SENATE

REPORT
100-122

ALTERNATIVE AGRICULTURAL PRODUCTS RESEARCH ACT OF 1987

JULY 23 (legislative day, JUNE 23), 1987.—Ordered to be printed

Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

[To accompany S. 970]

The Committee on Agriculture, Nutrition, and Forestry, to which was referred the bill (S. 970) to authorize a research program for the modification of plants and plant materials focusing on the development and production of new marketable industrial and commercial products, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE AND NEED FOR THE LEGISLATION

The strength and competitiveness of American agriculture depend upon our ability to utilize the productive capacity of our nation's agricultural lands in innovative ways. This legislation provides for research to modify plants and plant materials to develop new marketable industrial and commercial products.

If our agricultural industry is to remain prosperous, and if America is to retain her leadership in the world agricultural economy, then it is essential that we concentrate on technologies which have the potential to improve the profitability of farming. The purpose of this legislation is to fund research that, in the long run, will lead to new agricultural crops and products with new markets. Such research will result in the diversification of production on American agricultural land.

American farmers are more productive than farmers in virtually every country of the world. That productive capacity means that we can meet all of our nation's food and traditional fiber needs with ease. But it has also meant that we overproduced certain com-

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modities and that our production is concentrated in a relatively few major food and feed crops. Many farmers are left with three choices: to produce at levels in excess of demand creating lower prices that will not cover the costs of production; to leave part of the farm capacity idle; or to find new uses for that capacity. This legislation will allow farmers to choose the last option and thus utilize the full productive capacity of our nation's rich and abundant agricultural land.

Soon advances in biotechnology, chemistry, and in other sciences promise to revolutionize agriculture as we know it. The small number of research projects conducted in the area of new crops and crop uses indicate the potentially immense returns on research investments in this field.

Biodegradable plastics, industrial chemicals, chemical feedstocks, cosmetics, pharmaceuticals, and super absorbent polymers are among the many products that could be developed and produced from agricultural crops. This legislation could result in reduced health hazards by using crops in new ways such as replacing petroleum-based plasticizers with similar products made from vegetable oil, by using ethanol from biomass as a fuel to reduce urban lead levels and control atmospheric carbon levels, and by developing new pharmaceuticals. Many strategic and essential products such as natural rubber, and castor oil could be derived from plants. Further, new crops could supply essential American industrial materials such as waxes, resins, gums, and lubricants.

The Committee expects that this legislation will promote new products which will expand and diversify the markets for agricultural products rather than serving to compete with, or displace, current American agricultural products. The result will be a healthier rural economy.

The idea behind this legislation is not new. For many years government studies have targeted new crop development as an exciting and profitable way to meet industrial needs. Yet despite the repeated testimony and statistics, our nation has invested only a fraction of a modest federal agricultural budget in new crop development. Depending on the definitions used, less than 5 percent of the United States Department of Agriculture's research budget is now directed towards developing new nonfood products from plants. The low, erratic level of funding for alternative crops has proven to be insufficient to bring about the needed level of new crop development.

The time has come to adjust our priorities and increase the funding for research necessary to develop new crops and crop uses. Recent studies by the National Academy of Sciences, the Office of Technology Assessment, and the Government Accounting Office all indicate the need for additional emphasis on alternative agricultural research, especially biotechnological research.

Fundamental and applied research in alternative agricultural uses is actively being pursued by Japan and many European countries. Our foreign competitors are funding not only the basic research necessary to develop new technologies but also the applied research necessary to ensure the development of economically viable end products.

Under this legislation, the United States would secure its competitiveness by committing increased investment in such research. Research projects will encompass all the stages of research necessary to develop a product from the present level of knowledge to the point where it is economically viable for the marketplace.

Coordinated research efforts by government, academia, and industry are promoted by the legislation. The Committee believes that, in most cases, a successful research project would require expertise from a number of disciplines. The effect of this legislation would be to promote a lively and fruitful exchange between basic researchers, applied researchers, and the farmers and private companies who use the technology.

Like other industries, America's agricultural sector must either innovate or perish; our research agenda must reflect the changing world. America must lead in international applications of new agricultural technologies. This legislation will provide the resources necessary to develop new markets for our farmers.

COMMITTEE CONSIDERATION

S. 970, to authorize a research program for the modification of plants focusing on the development and production of new marketable industrial and commercial products, and for other purposes, was introduced by Senator Harkin, for himself, Senator Leahy, Senator Lugar, and Senator Glenn, on April 9, 1987 and referred to the Committee on Agriculture, Nutrition, and Forestry.

The Committee held a hearing on the above legislation on May 15, 1987. At that hearing Dr. Orville Bentley, Assistant Secretary for Science and Education of the Department of Agriculture and Dr. Kingsbury, Assistant Director for Biological Behavioral and Social Sciences, National Science Foundation, testified in favor of research and development for new crops and new crop uses. However, they stated that the Department of Agriculture already has sufficient authority to undertake such research without this legislation.

Two representatives of the National Corn Growers Association, Steve Wentworth, Vice President of Market Development, and Harold Smedley, Director of Market Development testified in favor of the bill. Three industry representatives, Richard Godown, President, Industrial Biotechnology Association, Dr. Nicholas Frey, Director of the Department of Biotechnology Research, Pioneer Hibred International, Inc., and Roger Salquist, Chief Executive Officer, Calgene, Inc. all testified in favor of the bill. Three members of the academic community, Dr. B.R. Baumgardt, Director, Indiana Agricultural Experiment Station, Purdue University, Dr. Daniel Zaffarano, Vice President for Research, Iowa State University, and Dr. David Zartman, Special Assistant to the Vice President of Agriculture, Ohio State University all testified in favor of the bill. A representative of a biotechnology university-industry-government consortium, Dr. Harvey Drucker, Chairman, Midwest Plant Biotechnology Consortium, testified regarding the benefits of consortia in research efforts.

On June 24 the Committee met to mark up the legislation. At that meeting Senator Harkin offered an amendment which was

adopted unanimously. The amendment corrected several drafting oversights and made several minor changes suggested by witnesses who testified at the hearing. The bill, as amended, was ordered reported unanimously.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title.

Section 2. Purpose of the Act: The purpose of this bill is to promote research in the modification of plants and plant materials, and associated research, in order to develop and produce new products and new product uses other than food or traditional fiber products, and thereby utilize the productive capacity of American agricultural land in a way which will not displace or compete with current American agricultural products. To do this, a New Products Research Board is established to advise the Assistant Secretary of Agriculture for Science and Education, regarding the selection criteria for, and scientific feasibility of, prospective research projects.

Section 3. Definitions: Section 3 provides several definitions of terms used in the bill including the following:

(1) Biotechnological research project

A Biotechnological Research Project is a project which is directed toward modifying the genetic material of a plant or in some other way modifying the basic nature of a plant. The term "biotechnology" is intended to be interpreted broadly to fully reflect the extent of advances in biology. Recombinant DNA technology, also know as genetic engineering, is but one method for altering the genetic structure of plants. Other methods of genetic alteration of plants will continue to be developed as the science progresses. It is the Committee's intention that such new technologies, when they are developed, fall within the definition of biotechnological research project and the scope of this legislation.

A biotechnological research project includes all of the research activities that are necessary for the development of the target project including, for example, the directed fundamental research in the laboratory as well as the research necessary to demonstrate the viability of a specific plant or the economic feasibility of a specific product.

(2) Development

As used in the bill, the word development means targeted research. By targeted, the Committee means research to provide the information necessary to bring a product from the present state of knowledge to the point where the product is viable for the marketplace. Targeted research may therefore include fundamental research and applied research.

Fundamental research is of a basic type which will have broad application in many areas. Under this bill, however, funding is allocated only to those fundamental research activities that are directed to the development and production of new products.

Applied research includes activities to gain knowledge or understanding necessary for determining the means by which a recognized and specific need may be met. This include research aimed at

bringing a product to the point of economic viability—from the laboratory to the marketplace—and may include but not be limited to research: to demonstrate that the product can be produced in commercially useful quantities; to separate and purify the product to the level necessary for commercial use; to develop methods for the commercial manufacture of the product; to study the product so its commercial uses can be fully understood; and to develop any needed methods of cultivation.

It is the intent of this Committee to encourage the development of modified plants and new products and new product uses along a continuum. The Committee means to assist every stage of development, beginning in the research laboratories up until a product is ready for the marketplace. The funding of projects that encompass all the various stages of product development will therefore eliminate any potential gaps in the transfer of the technology from the public to the private sector.

Most research projects will consist of many research activities. Consider, for example, a project directed toward genetically engineering corn plants to produce a particular chemical feedstock, which would be separated from the plant after harvest, purified, and packaged for the market. Fundamental research would include, but would not be limited to, research into how to engineer the plant to express foreign genetic material. Applied research would include research into how to separate and purify the chemical substance from the plants that had been genetically engineered to produce it. Applied research could include, but not be limited to, determining how to most efficiently produce the specific product from the plants. Applied research could also include studying the comparative costs of producing the chemical using plants rather than nonagricultural means.

The Committee recognizes that it is often difficult to predict in year one of a research project the technical difficulties that will be encountered in later years. Nevertheless, where certain general problems can be foreseen, these should be identified as early as possible. The Board should exercise flexibility and discretion to permit alternations of early projections as technical and commercial problems are more clearly identified during the course of a research project. In some cases, the Board may choose to abandon a project that encounters problems after the initial project term expires.

(3) New product

The term new product is intended to mean an item developed through a biotechnological research or a plant product research project that is primarily not food or traditional fiber. Such products could include production of a novel chemical that is not being produced or a chemical that is not novel but has never been produced using plant materials to a substantial degree. Thus, it is the intention of the Committee to promote new products which will expand and diversify agricultural markets rather than to compete with, or displace, existing American agricultural products. To be a "new product," it is not necessary that a product be absolutely novel. It does mean, however, that the product must be unavailable from plants in quantities adequate for commercial use. Commercial un-

availability can be due to technical problems, cost inefficiencies, or inferior quality associated with existing methods using agricultural materials. Thus, for example, research into new advanced separation methods to convert modified corn into alcohol for use is a gasoline-alcohol fuel blend would be considered "new product" research if it is likely that the new method of processing would create a substantial new market for alcohol fuels that does not presently exist.

(4) Nontraditional food

Nontraditional food means a food product that has substantial new properties and that is not now derived from agricultural materials. The Committee does not intend to include the modification of taste and texture as substantial new properties in the case of nontraditional food. For example, research to develop a tastier tomato would not be considered within the intended purpose of developing a nontraditional food and would not receive funding under this bill. However, development of a nontraditional food would include research on a protein or a fat material that had a greatly reduced number of calories when consumed.

(5) Plant product research project

This term means a project that is directed towards the development of a new marketable industrial or commercial product, other than a food or traditional fiber product, through the modification of the product of a plant.

Plant product research includes research into bioprocess technologies (such as fermentation, separation and purification of the desired end product), as well as research devoted to discovering new ways to use existing plant materials. Plant product research can involve use of the plant material. It must involve developing either a novel end product, an end product that has not previously been made in substantial quantities from agricultural materials, or an end product that is technically, but not commercially, feasible using existing agricultural technology.

Plant product research includes the research necessary to separate a specialty chemical from a plant in order to produce that chemical in commercially significant quantities, as well as research to purify the chemical and otherwise make it commercially viable to produce that chemical from a plant. A continuum of research will be followed regardless of whether the chemical so produced is a novel product or is a chemical that is not novel but has never been produced in substantial quantities from plant materials.

Plant product research also included the expansion of chemical production techniques if current methods of producing the chemical from agricultural products are not economically viable.

(6) Project

A project encompasses all the stages of research activities necessary to develop a product from the present level of knowledge to the point where it is economically viable for the marketplace. It may include a substantial number of diverse research activities, some of which might be regarded as fundamental.

(7) Traditional fiber

The term "traditional fiber" refers to fiber derived from agricultural materials but without substantial new properties. The term "non-traditional fiber" refers to a fiber derived from agricultural materials that would, by virtue of its properties, open new markets for agricultural products. Such new properties could be chemcial, physical, or mechanical. An example of a non-traditional fiber that could be developed under this definition would be a fiber derived from a plant material that would have the strength or heat resistance of a synthetic fiber.

Section 4. New Products Research Board: Subsection (a) establishes the New Products Research Board. Subsection (b) describes the functions of the Board which include: advising the Secretary on specific targets of opportunity for development of new marketable industrial and commercial products from plants and agricultural materials; recommending projects for funding; establishing expert advisory committees to assist the Board; and reporting on the progress of the funded projects.

Subsection (c) provides for the Board appointments. The six members of the Board include two people appointed by the Assistant Secretary of Agriculture, and one person appointed by each of the following organizations: National Science Foundation, Department of Energy, Department of Commerce, and the Office of Technology Assessment. The membership of the Board is composed of government employees to avoid conflict-of-interest problems.

Subsection (d) allows the Board to appoint personnel as needed for it to carry out its responsibilities under the legislation. The Committee intends that minimal funds be allocated for personnel so that funds will primarily be used for research projects.

Subsection (e) of this section provides for the establishment of expert committees. The Board is expected to carefully weigh the views of the scientists, and industry and farm representatives in this process. It is the Committee's intent that the Board shall establish expert committees to assist the Board in evaluating the specific proposals to conduct the research projects. It is also the Committee's intent that the Board enlist the help of experts from all parts of the nation and from many disciplines. The infusion of ideas from diverse expert committees will enhance the ability of the Board to carry out the purposes of this legislation.

The Board may establish expert committees of technical experts to assist the Board in identifying specific targets of opportunity for research that most closely meet the selection criteria required for a project, to recommend the funding of specific proposals after technical review, and to report on the progress of projects that are undertaken under this bill. Membership may include but not be limited to molecular geneticists, bioprocess engineers, plant physiologists, biochemists, chemical engineers, economists, and agronomists. The Committee encourages reviewers of a proposed directed fundamental research study to include representatives of applied research, and similarly, applied research proposals should be reviewed by some individuals with strong basic research backgrounds.

The Board may also establish expert committee of farm and industry representatives. A key question in the development of any new product is what research must be undertaken so that the product can be brought to commercial use. Industry representatives can provide invaluable insight into the needs, limitations, and capabilities of industry and the technology transfer process. Industry representatives may include but not be limited to the following: economists, trade and business organization representatives, and representatives from industrial sectors whose companies are likely to be involved in the development or use of the potential new products. Farm representatives can provide input and reference the types of plants farmers are willing to grow and the areas of research that might be necessary in terms of cultivation and preparation of plants so they can reasonably be adopted by farmers. Farm representatives may include but not be limited to representatives from major commodity groups and national farm organizations.

Subsection (f) authorizes the Board to propose rules and regulations to the Secretary. Subsection (g) authorizes the Board to utilize the facilities and services of the Department of Agriculture. Subsection (h) provides that the Board may hold hearings as the Board considers appropriate.

Section 5. Research Projects: Section 5 sets out the criteria to define projects under this bill. The criteria for project selection are to be considered collectively. Research funds are limited and the Committee expects that the Board will balance the priorities set forth in the criteria so as to maximize the likely benefit to American agriculture and the national economy, taking into account the limitations on funding under the federal budget.

In connection with evaluating a project for funding, the likelihood of success is important. A project which will result potentially in a product that has a narrow use and which will involve a relatively small number of acres of existing agricultural land should be considered less worthy of funding than a project which will potentially develop a product having wide application and which requires the planting of a crop covering large amounts of agricultural land. However, if a project with a small potential acreage impact requires a comparably small amount of funding it should not be eliminated from consideration just because of its limited impact. Further, significant national security or public health benefits should be considered in reaching funding decisions.

Subsection (b)(2)(A) concerns the prospect of developing the technologies necessary to provide an economically viable quantity of new products. The Board should also consider the relative costliness of the research necessary to make a product viable for the marketplace.

Some fundamental research may have applications to several projects. When the Board considers the likely costs of various projects, it should take that into account. Where several research entities are selected for funding to undertake research projects that have similar fundamental components, the Board may recommend the funding of a designated consortium or entity, to undertake the shared research component on behalf of the other entities funded by the Board. The knowledge gained would then be shared among

the funded organizations, thus avoiding needless duplication of efforts.

Subsection (b)(2)(B) provides that one criterion is the need for a new product. The Committee intends that the projects selected will not only aid the agricultural sector, but also benefit consumers by providing new and useful products. Subsection (b)(2)(C) provides that one criterion is the potential market size of the new product.

Subsection (b)(2)(D) provides that one criterion is the likely time period needed to bring the new product to the market. The Committee anticipates that many projects could take 10, 15, or 20 years for the development of a new product. This will be especially true of biotechnological research projects. While the Committee expects that the Board will look to projects that will provide likely economic benefits in a relatively short period, the Committee recognizes that many valuable projects will require a long period of study. Projects which are not likely to provide a commercially available product for a very long period should be considered for funding if the promise of success and the benefit level are high.

Subsection (b)(2)(E) establishes as a criterion the likely impact on reducing Federal crop subsidies and other Federal agricultural assistance program costs.

Subsection (b)(2)(F) establishes as a criterion the likely ability to grow the plant used to produce the product at a profit. The Committee believes that the Board must carefully consider the entire infrastructure of farms that will grow new or modified crops. If new types of equipment are needed but are not affordable, then it is not likely this criterion can be met. For that reason, the Committee believes that the Board should carefully examine the cultivation and other practical difficulties that will be encountered with new crops.

Subsection (b)(2)(G) establishes as a criterion the availability of the expertise and facilities required to conduct the proposed research. The committee expects that no substantial amount of research funds authorized under this bill will be allocated for the construction of research facilities when such facilities are available in the country.

Subsection (b)(2)(H) provides that funding will not be provided under this bill if it is determined that sufficient funding for a project is available from other sources. It is not the Committee's intention to duplicate existing funding sources nor to put the Federal government in competition with a private firm that is already conducting such a project. However, that does not preclude partial funding of projects where only limited funding is available from alternative sources. The Board may recommend and the Secretary may establish contractual requirements for matching funds where such funds are available and where such a requirement is not likely to significantly reduce the quality and timing of the research that is necessary to complete a project.

Projects may be funded for periods of not less than three years or until a marketable product is developed. At least half of the funding authorized by this bill is to be given to biotechnological research projects. The Committee believes that funding should be allocated for an entire project and should not be provided on a research-activity-by-research-activity basis.

Subsection (c) provides that funding will be allocated to consortia, unless the Board finds that a project is more appropriate for only a single research entity. In most cases, a successful research project would require expertise from a number of disciplines. In these situations, a coordinated effort by government, academia, and industry research institutions is most appropriate since it is unlikely that a single research institution would have the capability, resources, and background to conduct the various research activities necessary to bring a project from the present state of knowledge to the point where it is ready for commercialization.

It is the Committee's intent to promote multi-disciplinary research and cooperation among industry, university, and government institutions by providing funding to consortia on a preferential basis. In most cases, research would be conducted by a project consortia including any combination of the following: public and private colleges and universities; private research facilities and personnel; state agricultural experiment stations; and federal research laboratories.

The Committee intends that funding recipients readily share the fruits of their research. Industry and technical publications provide an invaluable platform for publicizing the accomplishments resulting from a project. Undoubtedly, widespread dissemination of research results will multiply the benefits of any one project.

Subsection (c) also provides that the Secretary shall fund not less than 20 projects within the 36-month period beginning on the date of enactment of this bill and subject to appropriations.

Subsection (d) concerns contracts. The Committee does not intend for this section to modify existing options the Secretary may have in determining the terms of contracts with regard to such things as matching funds requirements, and other benefits that consortia or other entities might provide. Further, the Committee does not mean to prohibit inducements which the government might provide, such as patent rights, which the Secretary is already authorized to make under current law.

Section 6. Authorization of Appropriations: This section authorizes the sum of $75 million to be appropriated for fiscal year 1988 and annually thereafter for a period of 19 years.

ADMINISTRATION VIEWS

The Committee received the following testimony from Orville G. Bentley, Assistant Secretary for Science and Education, United States Department of Agriculture. The Department requested that Dr. Bentley's testimony be included in this report as evidence of the Administration's views on S. 970 as amended by Committee.

STATEMENT BY ORVILLE G. BENTLEY, ASSISTANT SECRETARY, SCIENCE AND EDUCATION, U.S. DEPARTMENT OF AGRICULTURE

"One way to expand the farmer's market is to develop industrial uses for farm products." These words were contained in the introduction of a chapter entitled "The Industrial Market for Farm Products" in the 1940 Yearbook of Agriculture.

"Why do we not grow a greater variety of crops, particularly to provide raw materials for industry?" This question was posed in the 1963 Yearbook of Agriculture in the chapter devoted to "The Search for New Crops."

Mr. Chairman, I welcome the opportunity to appear today before this Committee of the U.S. Senate to testify on S. 970, the "Alternative Agricultural Products Research Act of 1987." I opened with the quotes from the past because I think we should recognize the fact that American agriculture has long been aware of the potential which exists for the creation of industrial and commercial products from its crops.

In 1938, Congress authorized the creation of four regional agricultural laboratories which would be devoted to product research and development. These Centers, operated by the Agricultural Research Service, and located at Peoria, Illinois; Wyndmoor, Pennsylvania; Albany, California; and New Orleans, Louisiana, have been involved in the research and development which led to many of the new products derived from agriculture, as well as for products used in the production of our food and fiber.

As an example, just a few days ago we issued a news release which stated that "Processes developed by the U.S. Department of Agriculture researchers for making a biodegradable plastic have been licensed for use by a company that hopes to have a fast degrading cornstarch-plastic resin ready for commercial manufacture within a year." This release pointed out that the resin, which is 40 to 50 percent cornstarch, could partially replace petrochemicals in polyethylene products such as trash can liners. The processes were developed by scientists at USDA's Northern Regional Research Center in Peoria.

In late 1984, then-Secretary of Agriculture John R. Block sponsored a "Secretary's Challenge Forum on New Uses for Farm and Forest Products." As an outgrowth of that forum, we proposed and Congress provided funds for a $10 million initiative to develop new uses for a variety of crops and livestock surpluses, and to develop new products for export. I am pleased to report that this program, funded in 1987, is under way at a number of ARS locations. Raw materials under investigation include starch, vegetable oils, tallow, and cotton fiber. Use of a range of new technologies will be used to target non-food products such as detergents, paints, lubricant oils, construction products and others. Close coordination with industry and university scientists will help assure the success of this research.

A public-private task force was also created to carefully examine the issue of finding new uses for farm and forest products, with particular emphasis being given to industrial uses. That task force, comprised of private sector, university, and federal members, has completed its work and will be issuing a final report within the next few weeks.

Mr. Chairman, I have presented this brief background to indicate that the U.S. Department of Agriculture supports research and development to find new uses for farm and forest products. As I read the purpose of S. 970—To authorize a research program for the modification of plans and association research, in order to develop and produce marketable products other than traditional food and fiber products—I must conclude that the Department presently has sufficient authority to achieve that purpose.

My comments should not be construed as suggestive that we are against the concept of new uses research which is contained in this bill. To the contrary, as I have said, the Department is actively engaged in such research and development projects. The Administration is, however, opposed to enactment of this bill because it substantially would duplicate present authorities for research. The bill also would also authorize a $75 million annual appropriation for each of the next 20 years. Again, I must point out that present authorities are sufficient to allow the Congress to appropriate monies for the type of research called for in this bill.

Further, the bill would establish a New Products Research Product to advise the Secretary on policies and specific research proposals for new uses. This Board would unnecessarily duplicate functions already carried out by other committees, such as the Joint Council on Food and Agricultural Sciences.

I do want to commend the sponsors of this bill and other Members of the Congress who have expressed interest and provided support to USDA's efforts to find new uses for farm and forest products. I would certainly be remiss if I did not call attention to the similar work which is being conducted by our Nation's Land-Grant Universities and Colleges, and by the Forest Products Laboratories. I am advised that later today you will be hearing from representatives of the university research community, and I am sure they will be pleased to inform the Members of this Committee of their activities.

I have with me today Dr. William Tallent of the Agricultural Research Service, and Dr. Paul O'Connell of the Cooperative State Research Service. We will be pleased to respond to any questions you might have about the ongoing activities of the Department to find new uses for farm and forest products. Thank you for giving the Department of Agriculture this opportunity to appear before the Committee.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee made the following evaluation of the regulatory impact which would be incurred in carrying out S. 970.

The bill is not a regulatory measure in the sense of imposing government-established standards or economic responsibilities on private individuals or businesses. The bill is expected to have no regulatory impact on any state or local government or on businesses or farms except to the extent where an entity may seek a contract for research funding under the measure.

COST ESTIMATE

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee estimates that the enactment of S. 970 would cost the Federal Government up to $75 million a year for 20 years beginning in fiscal 1988.

In accordance with the Congressional Budget Act of 1974, the Congressional Budget Office prepared the following cost estimate, which is consistent with the Committee's cost estimate.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 9, 1987.

Hon. PATRICK J. LEAHY,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 970, the Alternative Agricultural Products Research Act of 1987.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 970.

2. Bill title: Alternative Agricultural Products Research Act of 1987.

3. Bill status: As ordered reported by the Senate Committee on Agriculture, Nutrition, and Forestry, June 24, 1987.

4. Bill purpose: The bill authorizes appropriations for spending on research to develop and market new products from the modification of plants.

5. Estimated cost to the Federal Government:

AUTHORIZATIONS SUBJECT TO APPROPRIATIONS

(By fiscal year, in millions of dollars)

	1988	1989	1990	1991	1992
Estimated authorization level	75	75	75	75	75
Estimated outlays	25	75	75	75	75

The costs of this bill fall within budget function 350.

Basis of estimate: This estimate assumes enactment of the bill before the beginning of fiscal year 1988 and appropriation of the authorized amounts. No direct spending authority is provided. S. 970 authorizes appropriations of $75 million a year for 20 years beginning in fiscal year 1988. The bill sets up a New Products Research Board in the Department of Agriculture to recommend funding for proposals for research on development of a new crop or modification of an existing crop. At least five projects are to be approved within 12 months of enactment of this bill.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Eileen Manfredi.

10. Estimate approved by: C. G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

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Calendar No. 261

100TH CONGRESS
1st Session

SENATE

REPORT
100-127

IMPROVING COMMODITY DISTRIBUTION PROGRAMS

JULY 28 (Legislative day, JUNE 23), 1987.—Ordered to be printed

Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

[To accompany S. 305]

The Committee on Agriculture, Nutrition, and Forestry, to which was referred the bill (S. 305) to improve the administration of commodity distribution programs, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that this bill do pass.

BRIEF EXPLANATION

The major provisions of the bill are briefly described below.

The bill requires the United States Department of Agriculture to improve the quality, packaging and delivery of commodities issued by that Department regarding several commodity distribution and supplemental food programs.

The bill extends the National Commodity Processing Program until June 30, 1989, under which food processors receive donated foods from the United States Department of Agriculture, incorporate those foods into other food products and sell the end products to school food service authorities, welfare agencies and similar recipient agencies at prices reduced by the value of the donated commodities.

The bill extends the eligibility of certain school districts, until June 30, 1989, to receive cash or Commodity Letters of Credit assistance in lieu of receiving "entitlement" commodities for use in the National School Lunch Program.

The bill allows State agencies participating in the Women, Infants and Children (WIC) Program to devise methods to reduce food costs, such as by competitive bidding, and to use up to twenty per-

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cent of the savings for the costs of administering the program to additional applicants. The balance of the savings, at least eighty percent of the savings, must be used for additional WIC food purchases.

The bill requires that State agencies participating in the Women, Infants and Children (WIC) program to agree to coordinate the WIC program with the Medicaid program.

The bill requires that the United States Department of Agriculture conduct a national study of savings in the Medicaid program and State indigent health care programs regarding newborn infants during the first 60 days after birth. The study will examine cost savings in Medicaid and other health care programs regarding infants of mothers that participated in the Women, Infants and Children program.

Purpose and Need for the Legislation

Approximately 90,000 schools throughout the country receive USDA commodities through the National School Lunch Program, serving 24 million school children a day. A parallel feeding program, the Child Care Food Program, receives USDA commodities to feed thousands of children in child care institutions.

Each month USDA supplies commodities to around 150,000 needy Indians living on or near Indian reservations as a substitute for the food stamp program. Low income elderly receive supplemental foods under the USDA's Elderly Feeding Program. The poor of any age group can apply for surplus commodities distributed under the Temporary Emergency Food Assistance Program (TEFAP)—last year TEFAP distributed 410 million pounds of surplus cheese, 70 million pounds of butter, 127 million pounds of flour, 130 million pounds of rice and 78 million pounds of honey.

The Committee has received complaints about the quality, packaging and delayed deliveries of commodities provided to schools and other recipient agencies. At a hearing of the Subcommittee on Nutrition and Investigations, May 19, 1987, the Chairman of the American School Food Service Association, Ms. Shirley Watkins, testified about commodities arriving at the schools out of condition or "simply spoiled." She criticized late USDA deliveries and deliveries on little advance notice and explained the difficulties of trying to plan menus and other purchases without dependable and consistent deliveries.

"Commodities arrive in May that must be stored in cold storage all summer long until school opens in September. Commodities will arrive—sometimes an entire railcar of commodities—on 24 of 48 hours notice * * *," she testified. School food service personnel and commodity distribution organizations throughout the nation have complained about delivery of stale or damaged foodstuffs and the failure of USDA to promptly replace spoiled commodities.

Similar complaints have been raised about the commodites distributed regarding other USDA programs. This bill is designed to fine tune these commodity distribution efforts to ensure that wholesome, fresh and high quality commodities are delivered on time by USDA to recipient agencies participating in the National School Lunch Program, the School Breakfast Program, the Food

Distribution Program on Indian Reservations, Elderly Feeding Programs, the Child Care Food Program and other food programs. Indeed, USDA on its own initiative has taken several steps to address these concerns and to plan improvements in commodity distribution efforts.

The Committee has applied the provisions of the bill regarding package sizes and forms, dietary guidelines and other new requirements to the Temporary Emergency Food Assistance Program (TEFAP) "to the extent practicable." TEFAP has become an integral means, combined with other programs in the Committee's jurisdiction, by which our country supplies food assistance to low-income Americans and helps remove surplus commodities.

We have used the phrase "to the extent practicable" to grant some flexibility with regard to TEFAP, but that flexibility extends only so far as necessary to accommodate the special character of TEFAP. The Secretary, for example, is expected to make every effort to ensure that commodities and products are available in optimal packages and forms for handling by emergency food distributors and use by households. Of particular concern are reports that the packaging of TEFAP commodities has not been durable enough to withstand shipment and handling in some instances. The Committee expects this problem to be addressed to the extent practicable.

Concern was also raised at the May 19 subcommittee hearing over the fat and sodium content of certain USDA commodities. The bill requires that commodities distributed be consistent, to the maximum extent practicable, with USDA's own dietary guidelines. The vital importance of a proper diet is beyond medical dispute. The latest version of those guidelines, "Dietary Guidelines for Americans," provides that, "for the U.S. population as a whole, it is sensible to reduce daily consumption of fat. * * * Limit your intake of fats and oils, especially those high in saturated fat * * *" Regarding sodium the guidelines provide, in part, that you should, "limit your intake of salty foods * * * [and] use lower sodium products. * * *"

In the past USDA has supplied recipe cards for use by school food service authorities and other agencies explaining how to use USDA commodities in preparing healthy meals for large groups of children and other recipients. Recently, USDA has stopped providing those recipe cards. This bill requires that USDA distribute those cards as soon as practicable. At mark up the Committee agreed, without objection, that the recipe cards issued by USDA will conform, to the maximum extent practicable, to the "Dietary Guidelines for Americans." The Committee has been informed that the recipes have already been developed and thus expects those cards to be available for distribution within 30 days of enactment. The Committee has heard many requests for these updated cards from school food authorities around the nation.

As medical research evolves new discoveries are made about the healthfulness of foods for different age groups and other categories of Americans. The bill provides that the recipe cards be updated on a regular basis. The Committee assumes that this will be done to take into account, among other considerations, new scientific information and changes in the dietary guidelines published by the Sec-

retary of Agriculture and the Secretary of Health and Human Services. The current guidelines have been in effect since 1985.

The commodity programs are not only vitally important to those who consume the foods—they are likewise vitally important to farmers and ranchers throughout America. Through various price support and loan programs USDA acquires surplus agricultural products when farm prices are low. Millions of pounds of these surplus agricultural commodities are distributed through commodity programs to needy Americans.

Agriculture has always been a cyclical industry—subject to the whims of weather and climatic changes, foreign currency fluctuations, trade disputes and the like. Yet, American security and independence demands a diverse base of agricultural producers. Rural communities are the heart of America and deserve to be aided in bad times so that they can provide food to the rest of America at all times. American farmers and ranchers produce the best food products in the world. This bill is designed to ensure that these high quality foods get to needy Americans and our school children.

This partnership is most readily apparent in the school lunch program where, beginning with the Great Depression, USDA has acquired commodities to assist farmers in bad times and has then used those foods to feed needy school children throughout America. That vital link between USDA price support and loan programs and the school lunch program is weakened when schools do not use USDA acquired surplus commodities.

Based on concerns about weakening the partnership between agricultural producers and the school lunch program, the bill limits the extension of pilot projects designed to test alternatives to the school lunch program to two years. Slightly over sixty school districts now receive cash or commodity letters of credit to purchase foods for use in the school lunch programs instead of receiving USDA commodities. A report on these pilot projects has been issued. However, allegations have been made concerning the accuracy of that report. This limited two year extension is designed to carefully, and finally, study the issue of whether to discontinue these pilot projects.

The Committee is hopeful that the improvements required by this bill will encourage school districts to support the regular school lunch program—so that the partnership between producer and recipient will be strengthened.

One of the most significant improvements made by this bill concerns the Women, Infants and Children (WIC) supplemental food program. At the June 11, 1987, hearing of the Subcommittee on Nutrition and Investigations, Assistant Secretary of Agriculture Mr. John Bode testified that because of budget limitations only 40 percent of those eligible for WIC can receive benefits. Five state WIC directors testified that states have lengthy waiting lists of eligible pregnant women and infants who applied for assistance but had to be turned down because of the lack of funding. Regarding Iowa, for example, Dennis Bach, Director, Iowa WIC Program, stated that at the end of March Iowa had over 1,000 children on the waiting lists.

This bill expands the number of eligibles who can obtain WIC benefits without increasing program costs. It does this by providing

an incentive for states to buy WIC foods at reduced prices, through competitive bidding for example, thus allowing them to serve more infants, children and pregnant women.

Generally speaking, under current law state WIC agencies must use eighty percent of the federal funding for WIC food costs. They use the balance, approximately twenty percent, for "costs of nutritional services and administration" of the program. Most of these cost are for medical and nutritional risk assessments. WIC is unlike other food assistance programs. Applicants not only have to be low income—as is the case with other federal food assistance programs—they also have to be at nutritional risk as decided by a physician, nurse, nutritionist or other approved health professional. Moreover, WIC programs are required to provide nutrition education and information to WIC participants.

The medical tests can include hemoglobin analysis, hematocrit blood tests, or erythrocyte protoporphyrin exams. Other biochemical or anthropometric measurements are often conducted. The five WIC directors testified that the costs of the nutritional risk certifications, required by federal law, continue to rise faster than general inflation.

States have requested that they be allowed to expand the program by purchasing WIC foods at reduced costs. For example, the Oregon Congressional delegation sent a letter to Secretary Lyng on March 24, 1987, explaining that Oregon wanted to set up a "rebate system." Infant formula manufacturers would submit sealed bids and offer to supply rebates to Oregon for each can of infant formula purchased at retail stores with a WIC voucher. The approved manufacturer offering the highest rebate per can would be the exclusive supplier to WIC recipients for a specified period of time. Periodically, the bidding process would be repeated allowing other manufacturers another opportunity to be the exclusive WIC supplier.

Oregon, as well as other states, wanted to use some of the savings generated by the proposed rebate system to cover the costs of nutritional assessments and certification for the additional persons that could be served. Without being able to use some of the savings for the provision of nutrition services and related administrative costs, few states would be willing to attempt to expand the program by buying WIC foods more cheaply. Indeed, only a few states use competitive bidding to achieve savings--Vermont, Tennessee (which just began to implement such a program), Mississippi and, to a limited extent, Ohio and Maryland.

USDA's refusal to allow states to use some of the savings for necessary costs for nutrition services and administration was based, in part, on an Office of Management and Budget Circular. This bill is specifically designed to overturn that policy with regard to WIC funding since the bill clearly allows states to use up to 20 percent of the savings from a rebate or competitive bidding system for costs of nutrition services and administration.

First, to be eligible for these special procedures a state must achieve "savings" as specifically defined in the bill. Under new section 17(h)(5)(C)(i) of the Child Nutrition Act of 1966 these savings must be from a rebate system, such as is just being implemented in Tennessee, whereby food manufacturers pay cash amounts directly

to the state for each eligible item purchased with a WIC voucher. Competitive bidding is used to determine which manufacturer obtains the exclusive WIC contract for a specified period of time. In this case, the "savings' are the amount rebated—the amount paid back—to the state.

Section 17(h)(5)(C)(i) is also designed to cover an open market rebate system, such as is being considered by the State of Wyoming. Such a system does not provide for the exclusive right for only one manufacturer to supply the product to WIC recipients. Nonetheless, savings are achieved since each manufacturer or supplier must meet the state's requirements that products be provided at a specific net price or lower in order for the manufacturer's product to be eligible for purchase with WIC vouchers. Under these rebate systems the WIC food suppliers provide a cash payment back to the state's WIC account.

The bill also covers direct distribution or home delivery systems whereby states contract with suppliers or manufacturers to obtain WIC foods at reduced prices through competitive bidding procedures. Section 17(h)(5)(C)(ii), as added by this bill, defines the savings as the difference between an average statewide retail price and the cost to the agency of providing supplemental foods under contracts providing for reduced—less than retail cost—prices. The terminology "an average" was used instead of "the average" to allow the Secretary the authority to construct averages considering only prices at participating WIC retail stores. The Committee is hopeful that methods can be found to inexpensively and easily conduct representative price surveys.

The bill is designed to also cover the approach used in some parts of Ohio and Maryland to provide WIC foods. Ohio and Maryland operate home delivery systems in certain areas of the state. Each state contracts with dairies in some areas to deliver the WIC food package to recipients' homes. The dairy in turn obtains some WIC foods through competitive bidding procedures. Thus when the bill refers to "any competitive bidding system under which a State or local agency contracts for the purchase of supplemental foods and products at reduced prices," it would apply to those WIC foods procured by competitive bidding by the dairies in Ohio and Maryland.

Some states may wish to generate savings for certain WIC supplemental foods under subparagraph (i) while producing savings for other foods under subparagraph (ii). This mixed approach is certainly contemplated by section 5(C).

Once the amount of savings is calculated for each state under section 5(C), then sections 17(h)(5) (A) and (B) of the Child Nutrition Act determine how 20 percent of the savings are to be used. The first 10 percent of th esavings is automatically and fully available to the State agency to cover added costs of nutrition services and administration associated with serving additional recipients. States need not use all of this 10 percent for administrative costs—any portion of this 10 percent is available to purchase additional WIC foods by the State agency.

Another amount, up to 10 percent of the savings, is also available to states for nutrition services and administrative costs. However, this amount will be determined under regulations to be pro-

mulgated by the Secretary of Agriculture based on statutory criteria. This amount may thus range from zero to 10 percent—the total additional money available to State agencies under this bill for these administrative costs will thus range from 10 to 20 percent of the savings. Of course, states may use all, or some portion, of the additional funding for the purchase of more supplemental WIC foods as they desire. The term "total cost" in section 5(C)(ii) includes any costs in a direct distribution or home delivery system related to obtaining and providing supplemental foods to the extent those costs are considered as food costs under the law. For example, warehousing costs are part of the "total cost" so long as they are considered food costs.

Section 17(h)(5)(B), as added by this bill, sets forth four criteria that the Secretary must take into account in promulgating regulations regarding the computation of the percentage, between zero and 10 percent, of the savings available under that subsection. These criteria include: the types of persons to be served and the state's per participant costs for nutrition services and administration; the incremental costs per participant of serving more persons; amounts allocated and reallocated to states under USDA's allocation formula for administrative funds; and other factors considered appropriate to further efficient and effective administration. The criterion concerning amounts allocated and reallocated is intended to allow the Department to coordinate this new provision with its administrative funding formula, which it is now in the process of revising. This criterion is not intended to refer to the equity or targeting formulas that are part of the Department's system for allocating WIC food funds among states or to penalize states that qualify for equity or targeting funds.

To provide ample time for notice-and-comment rulemaking, the bill allows the Secretary until the first day of the first quarter beginning 180 days after the date of enactment to implement these provisions—the rules must go into effect on that date. Thus, the Secretary must treat all savings realized on and after that date under these new rules. However, these new procedures do not apply to savings realized before that date. Comments from State health departments, State WIC directors, Food and Nutrition Service Regional Offices and the public are likely to provide useful input regarding the proposed rule.

The bill also provides for a study of the savings in the Medicaid program and in State indigent health care programs during the first 60 days after birth regarding newborns whose mothers participated in the WIC program while pregnant. The Committee anticipates that this study will be based on the approach used in a study conducted in Missouri of WIC prenatal participation and its relationship to newborn Medicaid costs.

States should be selected with the objective of including as representative a group as possible. The Committee contemplates that five to ten states will be included in the study. Criteria that the Department could use in selecting states could include the availability of data regarding Medicaid and State indigent health care costs for newborns within 60 days of birth and the availability of data systems to compare WIC and Medicaid participation.

The Missouri study noted that the most significant cost savings stemmed from the reduced need for neonatal intensive care for newborns born to mothers that participated in WIC. A finding, in a nationally representative study, that WIC participation reduced hospital costs for poor people could encourage states to expand their WIC program. In this way, state expenditures for their Medicaid contribution, or for similar State indigent health care programs, could be significantly reduced. This would make more than just good financial sense. To some extent, states would be spending money to prevent the delivery of less healthy babies—rather than spending money on caring for already sick or undernourished babies.

Committee Consideration

Several nutrition bills were referred to the Subcommittee on Nutrition and Investigations chaired by Senator Harkin. Two subcommittee hearings were held—May 19, 1987 and June 11, 1987—regarding these bills: S. 236, introduced by Senator Dole; S. 305, introduced by Senator Leahy; S. 902, introduced by Senator McClure; and H.R. 1728, as passed by the House of Representatives on April 7, 1987.

At the May 19, 1987 subcommittee hearing on these bills, the following people testified:

The Honorable John Bode, Assistant Secretary, Food and Consumer Services, U.S. Department of Agriculture.

Shirley Watkins, President Elect, American School Food Service Association.

Mary Klatko, Supervisor of Cafeteria Operations, Prince Georges County Public Schools.

James Barr, Chief Executive Officer, National Milk Producers Federation.

Lea Thompson, Anchor and Consumer Investigative Reporter, WRC-TV Washington.

At the June 11, 1987 subcommittee hearing, the following people testified:

The Honorable John Bode, Assistant Secretary, Food and Consumer Services, U.S. Department of Agriculture.

Arthur Simon, Executive Director, Bread for the World.

Dennis Bach, Director, Iowa WIC Program, Iowa Department of Public Health.

Joseph Williams, President, National Association of State WIC Directors.

C. Richard Blount, Chief, Missouri State WIC Program, Missouri Department of Health.

Manny Martins, Assistant Commissioner, Tennessee Department of Health and Environment.

Betsy Clarke, Oregon WIC Director, Oregon Department of Health.

Robert Greenstein, Director, Center on Budget and Policy Priorities.

Subcommittee markup was held on June 25, 1987, at which an amendment in the nature of a substitute to S. 305 was offered by Senator Harkin and favorably reported out of subcommittee. The

amendment combined aspects of all the bills pending before the subcommittee and previously discussed in this report.

Full committee markup was held on July 1, 1987, at which Senator Leahy offered an amendment in the nature of a substitute to S. 305. Senator Harkin offered an additional amendment which was approved. The amendment in the nature of a substitute offered by Senator Leahy, as amended, was unanimously reported out of committee.

Section-by-Section Analysis

Section 1. Short Title

Section 2. Sense of Congress

It is the sense of Congress that the distribution of commodities by the Department of Agriculture should be improved both to remove surplus commodities from the market and to provide nutritious foods to the needy.

Section 3. Commodity Processing Extension

Extends for two years the National Commodity Processing Program whereby food processors obtain donated USDA surplus commodities and process them into food products which are sold to eligible recipient agencies such as school food service authorities. The processors must reduce the price of the product by the value of the USDA commodity.

Section 4. Commodity Distribution Program Reforms

Requires the Secretary of Agriculture to improve the quality, packaging, size, form and delivery of commodities which USDA delivers under the National School Lunch Program, the Elderly Feeding Programs, the Food Distribution Program on Indian Reservations, the Child Care Food Program, the School Breakfast Program and other related programs.

The bill mandates that the commodities and products distributed shall be consistent with the dietary guidelines published by the Secretary of Agriculture and the Secretary of Health and Human Services to the maximum extent practicable. This section requires the Secretary to make the commodities and products available, to the maximum extent practicable, in optional package sizes and forms.

The Secretary must also make available summaries of the specifications for the commodities to State recipient agencies and must establish procedures to replace commodities which are found not to be in good condition.

This section requires the Secretary to monitor the age and condition of commodities that are stored by the Secretary to ensure acceptable quality. The Secretary also must establish an ongoing field testing program for commodity purchases to test product acceptability.

The Secretary must monitor the delivery systems used by state agencies and require them to implement effective delivery systems.

Final regulations regarding these section 4 commodity distribution reforms shall be issued within nine months after enactment.

Section 5. Extension of Eligiblity of Certain School Districts To Receive Cash or Commodity Letters of Credit Assistance for School Lunch Programs

Sixty-four school districts participate in the Cash or Commodity Letters of Credit (CLOC) pilot projects instead of receiving USDA commodities under the regular school lunch program. These school districts receive the value of the commodities that they would have received, presently 12.5 cents per meal per student, in the form of letters of credit for specified types of commodities or in cash.

This section extends those existing pilot projects until June 30, 1989. Any bonus commodities that they receive would, of course, continue to be received in the form of commodities.

Section 6. Costs for Nutrition Services and Administration

This section provides an incentive for States to arrange for the purchase of supplemental foods for the Women, Infants and Children (WIC) Program at reduced prices so that additional eligible women and children can be served. The incentive is that State agencies will be allowed to use up to 20 percent of the savings to cover the costs of nutritional risk assessments, nutrition education and administration costs. States are automatically eligible for the first ten percent of the savings as long as the savings are used in a manner that expands program coverage.

How much of the second ten percent they can receive depends on factors listed in this section. The Secretary is given until the first day of the first quarter beginning 180 days after enactment to implement final regulations regarding these statutory standards. Thus, these provisions apply to savings realized on or after that date.

Section 7. Coordination of WIC Program with Medicaid Counseling

The section adds Medicaid to the list of programs regarding which states are required to provide counseling to WIC recipients and with which states are required to coordinate.

Section 8. Study of Medicaid and Other Savings For Newborns Whose Mothers Participated in the WIC Program

Not later than February 1, 1990, the Secretary must submit a report to Congress that describes the savings during the first 60 days after birth for newborns regarding the Medicaid program, and state indigent health care programs, which resulted from the participation of the newborn's mother in the WIC program during pregnancy.

Cost Estimate

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee estimates that the enactment of S. 305 would cause very minimal costs to be incurred by the Federal Government.

In accordance with the Congressional Budget Act of 1974, the Congressional Budget Office prepared the following cost estimate, which is consistent with the Committee's cost estimate.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 7, 1987.

Hon. PATRICK J. LEAHY,
Chairman, Committee on Agriculture, Nutrition, and Forestry,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 305, the Commodity Distribution Reform Act of 1987, as ordered reported by the Senate Committee on Agriculture on July 1, 1987. The bill is estimated to increase federal costs by less than $500,000 annually.

Sections 3 and 4 would reform the manner in which agriculture commodities are distributed to food assistance agencies. Most of the requirements of these sections could be met with very little increase in administrative costs because they codify current practice, are already included in planned expenditures, or are limited by language which directs the Department to make changes "to the maximum extent practicable." For example, replacement of spoiled or damaged commodities is current practice, distribution of recipes is a planned $1.8 million expenditure under current law, and provision of commodities in the package sizes and forms requested by recipient agencies is limited by the "to the maximum extent practicable" language. There would probably be small increases in administrative costs for such activities as ongoing testing of the acceptability of commodities to recipients, monitoring of commodities, and monitoring of state delivery systems.

Section 5 would amend the National School Lunch Act to allow certain school districts to continue receiving alternative means of commodity assistance under the school lunch program. Specifically, school districts which had participated in the 1981–1985 demonstration project of alternatives to commodity donation would be allowed to continue receiving cash payment or letters of credit in lieu of commodities through June 1989. The Department of Agriculture estimates that the fiscal year 1987 cost of this limited extension is approximately $150,000. These costs are primarily for monitoring and processing the letters of credit in lieu of commodities. Costs are expected to remain roughly the same for the next two years.

Sections 6 through 8 would make changes in the Supplemental Food Program for Women, Infants and Children (WIC). Under Section 6, the ratio of WIC administrative expenses to WIC food costs would increase, but the total funding level would remain the same. Section 8 would mandate a national study of Medicaid savings resulting from participation of pregnant women in the WIC program. The Administration estimates that such a study would cost between $.5 and $1.0 million. The bill directs that this study be funded from an existing authorization for WIC evaluations, which is capped at $3 million. The bill would thus not increase spending. It would, however, displace other studies planned by the Department of Agricuture.

None of the sections of the bill would increase entitlement spending in the Child Nutrition programs. The provisions encouraging changes in the quality, size and form of commodities could result in

the distribution of more highly processed commodities. However, the dollar value of the commodities would remain at the legislated rate, (which is 12.0 cents per lunch served from July 1987 through June 1988).

Please call me if you have any questions or have your staff contact Julia Isaacs (226-2820).

With best wishes,

Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee made the following evaluation of the regulatory impact which would be incurred in carrying out S. 305.

The bill is not a regulatory measure in the sense of imposing government established standards or economic responsibilities on private individuals or businesses.

The bill will not require any significant additional paperwork or recordkeeping requirements. The bill does require that USDA promulgate regulations regarding certain provisions of this bill which regulations should be largely designed to affect USDA itself and state agencies.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

COMMODITY DISTRIBUTION REFORM ACT OF 1987

AGRICULTURE AND FOOD ACT OF 1981

* * * * * * *

DISTRIBUTION OF SURPLUS COMMODITIES, SPECIAL NUTRITION PROGRAMS

SEC. 1114. (a)(1) * * *

(2)(A) Effective through June 30, [1987] *1989*, whenever a commodity is made available without charge or credit under any nutrition program administered by the Secretary of Agriculture, the Secretary shall encourage consumption of such commodity through agreements with private companies under which the commodity is reprocessed into end-food products for use by eligible recipient agencies. The expense of reprocessing shall be paid by such eligible recipient agencies.

* * * * * * *

CHILD NUTRITION AMENDMENTS OF 1986

* * * * * * *

SEC. 4404. [In] *Effective through June 30, 1989, in* accordance with the terms and conditions of section 1114(a)(2) of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e(a)(2)), whenever a commodity is made available without charge or credit under any nutrition program administered by the Secretary of Agriculture, the Secretary shall encourage consumption of the commodity through agreements with private companies under which the commodity is reprocessed into end-food products for use by eligible recipient agencies.

* * * * * * *

SCHOOL LUNCH AND CHILD NUTRITION AMENDMENTS OF 1986

* * * * * * *

SEC. 364. [National Donated Commodity Processing Program.] *Repealed*

[In accordance with the terms and conditions of section 1114(a)(2) of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e(a)(2)), whenever a commodity is made available without charge or credit under any nutrition program administered by the Secretary of Agriculture, the Secretary shall encourage consumption of the commodity through agreements with private companies under which the commodity is reprocessed into end-food products for use by eligible recipient agencies.]

FOOD SECURITY ACT OF 1985

* * * * * * *

SCHOOL LUNCH PILOT PROJECT

SEC. 1581. (a) * * *

* * * * * * *

(b) Effective through the school year ending June 30, [1987] *1989*, the Secretary shall permit an eligible school district to receive assistance to carry out the school lunch program operated in the district in the form of, in lieu of commodities, all cash assistance or all commodity letters of credit assistance.

* * * * * * *

NATIONAL SCHOOL LUNCH ACT

* * * * * * *

COMMODITY DISTRIBUTION PROGRAM

SEC. 14. (a) * * *

* * * * * * *

(g)(1) As used in this subsection, the term "eligible school district" has the same meaning given such term in section 158(a) of the Food Security Act of 1985.

(2) [In] *Effective through the school year ending June 30, 1989, in* accordance with the terms and conditions of section 1581 of such Act, the Secretary shall permit an eligible school district to continue to receive assistance in the form of cash or commodity letters of credit assistance, in lieu of commodities, to carry out the school lunch program operated in the district.

* * * * * * *

CHILD NUTRITION ACT OF 1966

* * * * * * *

SPECIAL SUPPLEMENTAL FOOD PROGRAM

SEC. 17. (a) * * *

* * * * * * *

(f)(1)(A) Each State agency shall submit annually to the Secretary, by a date specified by the Secretary, a plan of operation and administration for a fiscal year.

(B) To be eligible to receive funds under this section for a fiscal year, a State agency must receive the approval of the Secretary for the plan submitted for the fiscal year.

(C) The plan shall include—

(i) a description of the food delivery system of the State agency and the method of enabling participants to receive supplemental foods under the program, to be administered in accordance with standards developed by the Secretary;

(ii) a description of the financial management system of the State agency;

(iii) a plan to coordinate operations of the program with special counseling services, such as the expanded food and nutrition education program, immunization programs, prenatal care, well-child care, family planning, alcohol and drug abuse counseling, child abuse counseling, and with the aid to families with dependent children, food stamp, [and maternal and child health care programs] *maternal and child health care, and medicaid programs*;

(iv) a plan to provide program benefits under this section to, and to meet the special nutrition education needs of, eligible migrants and Indians;

(v) a plan to expend funds to carry out the program during the relevant fiscal year;

(vi) a plan to provide program benefits under this section to unserved and underserved areas in the State, if sufficient funds are available to carry out this clause;

(vii) a plan to provide program benefits under this section to eligible persons most in need of the benefits and to enroll eligible women in the early months of pregnancy, to the maximum extent practicable; and

(viii) such other information as the Secretary may require.

(g) * * *

* * * * * * *

(h)(1) The Secretary shall make 20 percent of the funds provided under this section each fiscal year (other than funds expended for evaluations and pilot projects under subsection (g) of this section) available for State agency and local agency costs for nutrition services and administration. When reallocating funds, the Secretary may exceed the 20 percent limitation for costs for nutrition services and administration if the Secretary determines such action necessary for the proper, efficient, and effective administration of the program. Not less than one-sixth of the funds expended by each State agency for costs for nutrition services and administration under this subsection shall be used for nutrition education activities, unless the State agency requests that it be authorized to expand a lesser amount and such request is accompanied by documentation that other funds will be used to conduct such activities. The Secretary shall limit to a minimal level any documentation required under the preceding sentence.

(2) The Secretary, for each of the fiscal years 1979 through 1989, shall allocate funds for nutrition services and administration to each State agency on the basis of a formula determined by the Secretary, which shall include a minimum amount, and which shall be designed to take into account the varying needs of State agencies based on factors such as the number of local agencies and the number of persons participating in the program at those agencies.

(3) Each State agency shall provide, from its allocation for funds for nutrition services and administration, funds to local agencies for their costs for nutrition services and administration. Each State agency shall distribute funds for nutrition services and administration to local agencies under allocation standards developed by the State agency in cooperation with the several local agencies. Such allocation standards shall take into account factors deemed appropriate to further proper, efficient, and effective administration of the program, such as local agency staffing needs, density of population, number of persons served, and availability of administrative support from other sources.

(4) The State agency may forward in advance to local agencies those funds for nutrition services and administration necessary for successful commencement of program operations under this section during the three months following approval or until a program reaches its projected caseload level, whichever comes first.

(5)(A) In addition to the amounts otherwise made available under paragraphs (1) and (2), each State agency may use 10 percent of the savings (as defined in subparagraph (C)) for the costs of nutrition services and administration of the State agency and local agencies associated with increases in the number of persons served. In the case of a State agency that instituted a competitive bidding or rebate system before the date of enactment of this paragraph, the State agency may use savings under this subparagraph only if the use of the savings does not result in a reduction in the number of persons served in the State.

(B) In addition to the amounts otherwise made available under paragraphs (1) and (2) and subparagraph (A), each State agency may use up to 10 percent of the savings (as defined in subparagraph (C)) for the costs of nutrition services and administration of the State agency and local agencies to the extent that the additional expendi-

tures are related to increases in the number of persons served due to an increased availability of supplemental food assistance. The Secretary shall issue rules to implement this subparagraph that take into account—

(i) the types of persons to be served and the per participant costs for nutrition services and administration in the State;

(ii) incremental costs per participant of nutrition services and administration associated with serving an increased number of persons;

(iii) amounts allocated and reallocated under paragraphs (1) and (2); and

(iv) other factors considered appropriate to further efficient and effective administration, such as staffing needs, density of population, utilization of existing facilities and equipment, and other special circumstances that severely restrict the fiscal capacity of the State (such as a State economic crisis).

(C) As determined under procedures developed by the Secretary, the savings specified under subparagraphs (A) and (B) shall be—

(i) the amount of funds realized by a State agency as the result of a rebate system; or

(ii) in the case of a direct distribution or home delivery system, the difference, in any fiscal year, between—

(I) the total cost to the State agency of obtaining and providing one or more of the supplemental foods under any competitive bidding system under which a State or local agency contracts for the purchase of supplemental foods and products at reduced prices; and

(II) the total cost that would have been incurred in obtaining and providing such supplemental foods based on an average Statewide retail price, as measured by price surveys conducted by the State agency or other means approved by the Secretary.

(D) Paragraphs (3) and (4) shall apply to funds expended under this paragraph.

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[The amendment made by subsection 5 shall become effective and implemented on the first day of the first quarter beginning 180 days after the date of enactment of the Commodity Distribution Reform Act of 1987.]

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